

**ORIGINAL**

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March 5, 2019

**VIA HAND DELIVERY**

Hon. Herb Wesson, President  
Los Angeles City Council  
c/o Los Angeles City Clerk  
200 N. Spring Street, Room 395  
Los Angeles, CA 90012

RECEIVED  
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2019 MAR -5 AM 9:29  
BY [Signature] CITY CLERK  
PROPERTY

Re: **Objection to Violations of Constitutional and Legal Rights in Connection with the City Council Land Use Appeal Hearing, and Error In Referring An Item Required By Law For City Council Hearing To A Committee of Less Than The Entire City Council.**  
Objections to the Los Angeles City Council Hearing Scheduled for March 5, 2019 re: the Site Plan Review, Zone Change, District Change, Conditional Use Permit, Mitigated Negative Declaration and all other entitlements for the Tao Hotel/Dream II Hotel/Selma Wilcox Hotel project located at 6421-6429 ½ W. Selma Avenue, Los Angeles; CPC-2016-2601-VZC-HD-CUB-ZAA-SPR; ENV-2016-2602-MND, Council File 18-0873, City Council Meeting Agenda Item No. 3

Honorable President Wesson and Los Angeles City Councilmembers:

This firm and the undersigned represent Sunset Landmark, LLC (hereinafter "Sunset Landmark"). By this letter, we demand that the March 5, 2019 regular Council meeting agenda items on this matter be canceled and rescheduled because the City Council has failed to comply with the mailed notice and posted notice requirements in order to conduct a decision making land use appeal hearing. Previously, our firm objected because the City Council failed to provide actual notice to the four land use appellants who clearly, by virtue of their status as land use appellants, have a constitutional right to notice of the City Council's public hearing.

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Additionally, on March 1, 2019, we filed an objection letter pointing out that the City has violated the following:

- Various LAMC provisions that require the City Council to conduct a quasi-judicial land use appeal hearing at a full City Council meeting after complying with the mailed and posted notices of the public hearing, yet the City has provided no posted or mailed notice to owners and tenants within 500 feet of the Project.
- City Council Rules 16 and 8 that provide items of business where the law requires that the City Council conduct a hearing are not to be referred to committee, yet the City violated those rules by referring the land use appeals in this case to the Planning and Land Use Management Committee.

Accordingly, our March 1, 2019 letter concluded that the City has failed to comply with its own municipal code and City Council Rules, and accordingly, the rights of all property owners and tenants affected by the Selma Wilcox hotel have been denied constitutional due process and right to know about and participate in the final City Council hearing.

Today, we want to point out additional grounds for objection to the City's discriminatory application of its City Council Rules that violates principles of equal protection of the law and free speech of our client and all affected property owner and tenants. LAMC § 12.24.I.3 states in part: "Before acting on any appeal, the appellate body shall set the matter for hearing, giving the same notice as provided for the original hearing." In this case, involving a conditional use beverage permit, "[a]n applicant or any other person aggrieved by the initial decision of the Area Planning Commission or the City Planning Commission may appeal the decision to the City Council." § 12.24.I.2. Thus, it is incumbent upon the City Council, through its Clerk, to implement the mailed hearing notices and physical posting of the Project as originally applied for the initial hearing before the City Planning Commission.

The publication, mailed and posted notice requirement is provided in § 12.24.D:

"The Department shall give notice in all of the following manners:

1. **Publication.** By at least one publication in a newspaper of general circulation in the City, designated for that purpose by the City Clerk, no less than 24 days prior to the date of hearing; and

2. **Written Notice.**

(a) By mailing a written notice no less than 24 days prior to the date of the hearing to the applicant, the owner or owners of the property involved, and to the owners of all property within and outside of the City that is within 500 feet of the exterior boundaries of the property involved, using for the purpose of notification, the last known name and address of owners as shown on the records of the City Engineer or the records of the County Assessor. Where all property within the 500-foot radius is under the same ownership as the property involved in the application, the owners of all property that adjoins that ownership, or is separated from it only by a street, alley, public right-of-way or other easement, shall also be notified as set forth above; and

(b) By mailing a written notice no less than 24 days prior to the date of the hearing to residential, commercial and industrial occupants of all property within 500 feet of the exterior boundaries of the property involved. This requirement can be met by mailing the notice to “**occupant**”; and

(c) If notice pursuant to Paragraphs (a) and (b) above will not result in notice being given to at least 20 different owners of at least 20 different lots other than the subject property, then the 500-foot radius for notification shall be increased in increments of 50 feet until the required number of persons and lots are encompassed within the expanded area. Notification shall then be given to all property owners and occupants within the expanded area.

3. **Site Posting.** By the applicant posting notice of the public hearing in a conspicuous place on the property involved at least ten days prior to the date of the public hearing. If a hearing examiner is designated to conduct the public hearing, then the applicant, in addition to posting notice of the public hearing, shall also post notice of the initial meeting of the decision-making body on the matter. This notice shall be posted in a conspicuous place on the property involved at least ten days prior to the date of the meeting. The Director of Planning may adopt guidelines consistent with this section for the posting of notices if the Director determines that those guidelines are necessary and appropriate.”

None of these notices occurred for today’s City Council hearing. Such notices were given for the hearing conducted at the PLUM Committee, but as we observed last Friday, because LAMC requires the City Council to notice and conduct a hearing, it should have been listed on the portion of the City’s meeting agenda entitled “Items Noticed for Public Hearing,” and no referral to the PLUM Committee was proper under City Council Rules Nos. 8 and 16. Having conducted the improper and superfluous PLUM Committee Hearing, the City is mandated by Section 12.24 to give full notice and conduct a proper hearing at a regular City Council meeting. As we observed last Friday, because anyone who attended the November 27, 2018 PLUM Committee hearing received no announced or written notice of the day the matter would be heard in full City Council, the City cannot rely upon that expired notice as constitutionally proper notice for today’s hearing.

Because the City lacks procedural land use and zoning hearing rules as mandated by Government Code Section 65804, we anticipate that the City or developer’s attorneys will place in the administrative record today some last minute attempt to rebut our objection letter dated March 1, 2019. They might point to City Council Rule No. 16 that provides in part: “The Presiding Officer shall cause all matters filed with, or presented to the Council to be referred to the appropriate Council Committee, except as otherwise provided by the Rules **or where required by law to be first presented to the Council.**”(Emphasis added.) Based upon this language, they might argue that President Herb Wesson and the City Clerk acted properly to refer the land use appeals in this case to the PLUM Committee because LAMC Section 12.24 does not say the land use appeals shall be “first presented to the Council.”

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But a City Council Rule cannot be worded so inconsistently with the right to have a land use appeal heard in a noticed hearing before the City Council. If anything, LAMC Section 12.24 does not authorize the City Council to delegate its appellate land use hearing authority to a lesser committee or hearing officer. Because such delegation is expressly permitted at the City Planning Commission level in Section 12.24, the failure to provide for delegation to a lesser committee or hearing officer at the City Council level means the obligation of the City Council to notice and hear the land use appeals in this case are non-delegable. Accordingly, City Council Rule No. 16, being subordinate to the LAMC, cannot be interpreted to permit delegation of the hearing to only a portion of the City Council at the PLUM Committee.

Additionally, both the federal and California constitutions require that before significant property or other interests can be impaired by governmental action, reasonable notice to adjacent property owners/tenants and a right to be heard is minimally required. As we observed in our March 1, 2019 letter, the LAMC and state statutes prescribe many circumstances where the City Council is required by law to issue notice of a public hearing and conduct it to determine a variety of issues that might affect the property or other significant interests of persons.

For instance, on today's City Council meeting agenda, there are numerous public hearings noticed by the City Council under the Los Angeles City Administrative Code Section 7.35.2 related to determining a lien on real estate associated with abatement of nuisances. All of these public hearings, which could result in liens on properties in the amount of hundreds or thousands of dollars, are noticed for hearing at the full City Council regular meeting, are listed in the section of the meeting agenda entitled: "Items Noticed for Public Hearing," and the City Council will hear all protests of affected landowners challenging the imposition of the proposed nuisance lien on their real estate. This is an example of just one hearing City Council is required to hear by law. Similar hearings are required to levy lighting district assessments, and many other municipal actions where the City must by law conduct a hearing. To the best of our knowledge, in each of these cases, unless expressly delegated in the authorizing legislation, the City does not violate City Council Rule No. 16 and refer these other legally mandated "City Council hearings" to any committee of the Council.

Despite the City's apparent uniform process of scheduling City Council hearings on countless other matters, it might be puzzling why City Council Rule No. 16's usual exception for City Council hearings required by law, was ignored in this case (and in all land use appeal hearing cases of which we are aware), and the land use appeal hearing

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referred to the PLUM Committee. The property and impacts on the lives of adjacent owners and tenants in a land use appeal case is most often far more than the impact of a lien for a few hundred dollars in a nuisance case. Nearby property values can be diminished by hundreds of thousands up to millions of dollars. Negative environmental impacts could expose nearby tenants to extreme levels of noise, air emissions, toxics, and such impacts could go on for a 50-70 year life of the disputed project. How is it that such weighty municipal affairs, including in this case, have been improperly delegated to the PLUM Committee, when no provision of LAMC authorizes such delegation by the City Council, and no creative interpretation of City Council Rule No. 16 can legitimately overrule the LAMC's City Council hearing requirement?

One possible reason that land use appeal hearings have been shuttled over to a City Council Committee for hearing could be an impermissible purpose of suppressing First Amendment protected speech that might otherwise be broadcast over the City's cable television system, including information critical of City officials. Land use appeals by definition are controversial. The appellants are likely to speak critically against actions of the Planning Department, the Planning Commission, or the City Council. By denying land use hearing appellants a forum on cable television that other persons affected by other noticed City Council hearings are routinely afforded, the City's actions amount to discriminatory treatment of land use appeals based upon anticipated critical or controversial speech on the City's cable television channel.

The City's entire committee structure is constructed to take advantage of the Ralph M. Brown Act's exception set forth in Government Code Section 54954.3(a). That section states that when an item of business is heard by a committee solely consisting of members of the larger legislative body, if the item is not changed significantly between the committee hearing and the full legislative body's regular public meeting, the legislative body need not allow Brown Act public comment at its meeting. In the case of the Los Angeles City Council, every item that gets referred to a committee for this type of committee consideration, is routinely placed on the section of the regular meeting agenda entitled: "Items for Which Public Hearing Has Been Held." Thus, for routine items of business referred properly under City Council Rule No. 16 to a committee, the public comment occurs at the Committee Level which is merely recorded in audio form – and not broadcast on the City's cable television channels. Those items, to which ONLY the Brown Act's right of public comment applies, may lawfully be approved without allowing public comment at the full City Council meeting broadcast on cable television.

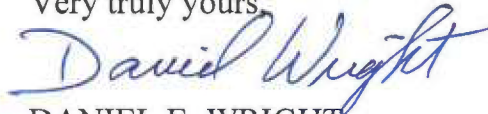
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But City Council Rule No. 16 cannot be lawfully used to improperly refer every City land use appeal hearing to the PLUM Committee, where only a fraction of the City Council hears the appeal, and then, under the pretense of the Brown Act, placed upon the portion of the City Council's agenda entitled "Items for Which Public Hearing Has Been Held." This is simply a false construct of the City to suppress free speech that would otherwise be heard by the approximate 40,000 viewers who watch the City Council meeting public access channel. When the LAMC or state law obligates the City Council to conduct a land use appeal hearing, it cannot be properly shuttled off to the PLUM Committee for a truncated "hearing," and then denied an actual hearing at full City Council, including land use appellant oral arguments and public testimony on the City's cable television channel.

On this basis, it is alleged that the City's purpose in violating City Council Rule No. 16 is to improperly refer the land use appeals in this case to the PLUM Committee. And in so doing, the City Council also seeks to unlawfully use Government Code § 54954.3(a) as a pretense to deny a constitutionally fair hearing before the full City Council, and to suppress from broadcast on the City's cable television channel land use appellant evidence of the City's unlawful conduct in connection with this case.

On these additional constitutional grounds, violation of the Equal Protection Clause of the federal and California constitutions in the discriminatory application of City Council Rule No. 16, and violation of speech rights guaranteed by the United States Constitution, First Amendment, and California Constitution's Free Speech Clause, the City is required to set aside today's placement of the Project's item of business in the section of the meeting agenda entitled "Items for Which Public Hearing Has Been Held." Hereafter, the City is required by law to lawfully notice a public hearing for a full City Council meeting, including hearing land use appellant arguments and public hearing testimony at a full City Council regular meeting. Such testimony, like every other noticed public hearing provided by law, will be broadcast over the City cable system.

Very truly yours,



DANIEL E. WRIGHT

FOR

THE SILVERSTEIN LAW FIRM, APC